

AMENDED IN SENATE AUGUST 16, 2010

AMENDED IN SENATE JUNE 24, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2668

Introduced by Assembly Member Galgiani

February 19, 2010

An act to amend Section 12021 of, and to repeal and add Section 171c of, the Penal Code, relating to weapons.

LEGISLATIVE COUNSEL'S DIGEST

AB 2668, as amended, Galgiani. Weapons: possession at State Capitol and legislative buildings.

Existing law makes it a crime for any person, with the exception of peace officers, to bring a loaded firearm into, or possess a loaded firearm within, the State Capitol, as specified.

This bill would repeal and recast these provisions and would make it a crime, punishable by imprisonment in a county jail for a period not to exceed one year, a fine not exceeding \$1,000, or by both that fine and imprisonment, or by imprisonment in state prison, to bring a loaded firearm into, or possess a loaded firearm within, the State Capitol and any of other specified locations of significance to the conduct of the Legislature and constitutional officers. The bill would also make it a misdemeanor, punishable by imprisonment in a county jail for a period not to exceed one year, or by a fine not exceeding \$1,000, or by both that fine and imprisonment, to bring or possess specified weapons or

ammunition within the State Capitol or in any of other specified locations of significance to the conduct of the Legislature, if the area is posted with a statement providing reasonable notice that prosecution may result from possession of the weapons or ammunition. The weapons restricted by this bill would include any firearm, any deadly weapon, as defined, any knife with a blade length in excess of 4 inches with a fixed blade or capable of being fixed in an unguarded position, any unauthorized tear gas weapon, any stun gun, any instrument that expels a metallic projectile, and any explosive. This bill would exclude from its provisions peace officers, peace officers of another state or the federal government who are carrying out official duties, persons summoned by these peace officers, persons holding a valid license to carry a firearm who ~~has~~ have permission from the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed weapon on the premises, and any person who has permission granted from the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a weapon on the premises.

Existing law provides that a person convicted of specified misdemeanor crimes who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a public offense, which shall be punished as specified.

This bill would add to this list of specified misdemeanor crimes the offense of possession of a loaded firearm in specified locations of significance to the Legislature or constitutional officers, as described above. Because this bill would change the scope of a crime, it would impose a state-mandated local program.

This bill would incorporate additional changes to Section 12021 of the Penal Code, proposed by SB 1062, to be operative only if SB 1062 and this bill are both enacted and become effective on or before January 1, 2011, both bills amend Section 12021 of the Penal Code, and this bill is enacted after SB 1062.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 171c of the Penal Code is repealed.

2 SEC. 2. Section 171c is added to the Penal Code, to read:

3 171c. (a) (1) Any person who brings a loaded firearm into,
4 or possesses a loaded firearm within, the State Capitol, any
5 legislative office, any office of the Governor or other constitutional
6 officer, or any hearing room in which any committee of the Senate
7 or Assembly is conducting a hearing, or upon the grounds of the
8 State Capitol, which is bounded by 10th, L, 15th, and N Streets in
9 the City of Sacramento, shall be punished by imprisonment in a
10 county jail for a period of not more than one year, a fine of not
11 more than one thousand dollars (\$1,000), or both such
12 imprisonment and fine, or by imprisonment in the state prison.

13 (2) Any person who brings or possesses, within the State Capitol,
14 any legislative office, any hearing room in which any committee
15 of the Senate or Assembly is conducting a hearing, the Legislative
16 Office Building at 1020 N Street in the City of Sacramento, or
17 upon the grounds of the State Capitol, which is bounded by 10th,
18 L, 15th, and N Streets in the City of Sacramento, any of the
19 following, is guilty of a misdemeanor punishable by imprisonment
20 in a county jail for a period not to exceed one year, or by a fine
21 not exceeding one thousand dollars (\$1,000), or by both that fine
22 and imprisonment, if the area is posted with a statement providing
23 reasonable notice that prosecution may result from possession of
24 any of these items:

25 (A) Any firearm.

26 (B) Any deadly weapon described in Section 653k or 12020.

27 (C) Any knife with a blade length in excess of four inches, the
28 blade of which is fixed or is capable of being fixed in an unguarded
29 position by the use of one or two hands.

30 (D) Any unauthorized tear gas weapon.

31 (E) Any stun gun, as defined in Section 244.5.

32 (F) Any instrument that expels a metallic projectile, such as a
33 BB or pellet, through the force of air pressure, CO₂ pressure, or
34 spring action, or any spot marker gun or paint gun.

35 (G) Any ammunition as defined in Section 12316.

36 (H) Any explosive as defined in Section 12000 of the Health
37 and Safety Code.

(b) Subdivision (a) shall not apply to, or affect, any of the following:

(1) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(2) A person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, and who has permission granted by the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed weapon upon the premises described in subdivision (a).

(3) A person who has permission granted by the Chief Sergeants at Arms of the State Assembly and the State Senate to possess a weapon upon the premises described in subdivision (a).

(c) (1) Nothing in this section shall preclude prosecution under Sections 12021 and 12021.1, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

SEC. 3. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

1 (b) Notwithstanding subdivision (a), any person who has been
2 convicted of a felony or of an offense enumerated in Section
3 12001.6, when that conviction results from certification by the
4 juvenile court for prosecution as an adult in an adult court under
5 Section 707 of the Welfare and Institutions Code, and who owns
6 or has in his or her possession or under his or her custody or control
7 any firearm is guilty of a felony.

8 (c) (1) Except as provided in subdivision (a) or paragraph (2)
9 of this subdivision, any person who has been convicted of a
10 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
11 subdivision (d) of Section 148, Section 171b, paragraph (1) of
12 subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243,
13 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6,
14 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of
15 Section 12034, Section 12040, subdivision (b) of Section 12072,
16 subdivision (a) of former Section 12100, Section 12220, 12320,
17 or 12590, or Section 8100, 8101, or 8103 of the Welfare and
18 Institutions Code, any firearm-related offense pursuant to Sections
19 871.5 and 1001.5 of the Welfare and Institutions Code, or of the
20 conduct punished in paragraph (3) of subdivision (g) of Section
21 12072, and who, within 10 years of the conviction, owns,
22 purchases, receives, or has in his or her possession or under his or
23 her custody or control, any firearm is guilty of a public offense,
24 which shall be punishable by imprisonment in a county jail not
25 exceeding one year or in the state prison, by a fine not exceeding
26 one thousand dollars (\$1,000), or by both that imprisonment and
27 fine. The court, on forms prescribed by the Department of Justice,
28 shall notify the department of persons subject to this subdivision.
29 However, the prohibition in this paragraph may be reduced,
30 eliminated, or conditioned as provided in paragraph (2) or (3).

31 (2) Any person employed as a peace officer described in Section
32 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
33 or livelihood is dependent on the ability to legally possess a
34 firearm, who is subject to the prohibition imposed by this
35 subdivision because of a conviction under Section 273.5, 273.6,
36 or 646.9, may petition the court only once for relief from this
37 prohibition. The petition shall be filed with the court in which the
38 petitioner was sentenced. If possible, the matter shall be heard
39 before the same judge who sentenced the petitioner. Upon filing
40 the petition, the clerk of the court shall set the hearing date and

1 shall notify the petitioner and the prosecuting attorney of the date
2 of the hearing. Upon making each of the following findings, the
3 court may reduce or eliminate the prohibition, impose conditions
4 on reduction or elimination of the prohibition, or otherwise grant
5 relief from the prohibition as the court deems appropriate:

6 (A) Finds by a preponderance of the evidence that the petitioner
7 is likely to use a firearm in a safe and lawful manner.

8 (B) Finds that the petitioner is not within a prohibited class as
9 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
10 and the court is not presented with any credible evidence that the
11 petitioner is a person described in Section 8100 or 8103 of the
12 Welfare and Institutions Code.

13 (C) (i) Finds that the petitioner does not have a previous
14 conviction under this subdivision no matter when the prior
15 conviction occurred.

16 (ii) In making its decision, the court shall consider the
17 petitioner's continued employment, the interest of justice, any
18 relevant evidence, and the totality of the circumstances. The court
19 shall require, as a condition of granting relief from the prohibition
20 under this section, that the petitioner agree to participate in
21 counseling as deemed appropriate by the court. Relief from the
22 prohibition shall not relieve any other person or entity from any
23 liability that might otherwise be imposed. It is the intent of the
24 Legislature that courts exercise broad discretion in fashioning
25 appropriate relief under this paragraph in cases in which relief is
26 warranted. However, nothing in this paragraph shall be construed
27 to require courts to grant relief to any particular petitioner. It is
28 the intent of the Legislature to permit persons who were convicted
29 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
30 relief from the prohibition imposed by this subdivision.

31 (3) Any person who is subject to the prohibition imposed by
32 this subdivision because of a conviction of an offense prior to that
33 offense being added to paragraph (1) may petition the court only
34 once for relief from this prohibition. The petition shall be filed
35 with the court in which the petitioner was sentenced. If possible,
36 the matter shall be heard before the same judge that sentenced the
37 petitioner. Upon filing the petition, the clerk of the court shall set
38 the hearing date and notify the petitioner and the prosecuting
39 attorney of the date of the hearing. Upon making each of the
40 following findings, the court may reduce or eliminate the

1 prohibition, impose conditions on reduction or elimination of the
2 prohibition, or otherwise grant relief from the prohibition as the
3 court deems appropriate:

4 (A) Finds by a preponderance of the evidence that the petitioner
5 is likely to use a firearm in a safe and lawful manner.

6 (B) Finds that the petitioner is not within a prohibited class as
7 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
8 and the court is not presented with any credible evidence that the
9 petitioner is a person described in Section 8100 or 8103 of the
10 Welfare and Institutions Code.

11 (C) (i) Finds that the petitioner does not have a previous
12 conviction under this subdivision, no matter when the prior
13 conviction occurred.

14 (ii) In making its decision, the court may consider the interest
15 of justice, any relevant evidence, and the totality of the
16 circumstances. It is the intent of the Legislature that courts exercise
17 broad discretion in fashioning appropriate relief under this
18 paragraph in cases in which relief is warranted. However, nothing
19 in this paragraph shall be construed to require courts to grant relief
20 to any particular petitioner.

21 (4) Law enforcement officials who enforce the prohibition
22 specified in this subdivision against a person who has been granted
23 relief pursuant to paragraph (2) or (3) shall be immune from any
24 liability for false arrest arising from the enforcement of this
25 subdivision unless the person has in his or her possession a certified
26 copy of the court order that granted the person relief from the
27 prohibition. This immunity from liability shall not relieve any
28 person or entity from any other liability that might otherwise be
29 imposed.

30 (d) (1) Any person who, as an express condition of probation,
31 is prohibited or restricted from owning, possessing, controlling,
32 receiving, or purchasing a firearm and who owns, purchases,
33 receives, or has in his or her possession or under his or her custody
34 or control, any firearm but who is not subject to subdivision (a) or
35 (c) is guilty of a public offense, which shall be punishable by
36 imprisonment in a county jail not exceeding one year or in the
37 state prison, by a fine not exceeding one thousand dollars (\$1,000),
38 or by both that imprisonment and fine. The court, on forms
39 provided by the Department of Justice, shall notify the department
40 of persons subject to this subdivision. The notice shall include a

1 copy of the order of probation and a copy of any minute order or
2 abstract reflecting the order and conditions of probation.

3 (2) For any person who is subject to subdivision (a), (b), or (c),
4 the court shall, at the time judgment is imposed, provide on a form
5 supplied by the Department of Justice, a notice to the defendant
6 prohibited by this section from owning, purchasing, receiving,
7 possessing or having under his or her custody or control, any
8 firearm. The notice shall inform the defendant of the prohibition
9 regarding firearms and include a form to facilitate the transfer of
10 firearms. Failure to provide the notice shall not be a defense to a
11 violation of this section.

12 (e) Any person who (1) is alleged to have committed an offense
13 listed in subdivision (b) of Section 707 of the Welfare and
14 Institutions Code, an offense described in subdivision (b) of Section
15 1203.073, any offense enumerated in paragraph (1) of subdivision
16 (c), or any offense described in subdivision (a) of Section 12025,
17 subdivision (a) of Section 12031, or subdivision (a) of Section
18 12034, and (2) is subsequently adjudged a ward of the juvenile
19 court within the meaning of Section 602 of the Welfare and
20 Institutions Code because the person committed an offense listed
21 in subdivision (b) of Section 707 of the Welfare and Institutions
22 Code, an offense described in subdivision (b) of Section 1203.073,
23 any offense enumerated in paragraph (1) of subdivision (c), or any
24 offense described in subdivision (a) of Section 12025, subdivision
25 (a) of Section 12031, or subdivision (a) of Section 12034, shall
26 not own, or have in his or her possession or under his or her
27 custody or control, any firearm until the age of 30 years. A
28 violation of this subdivision shall be punishable by imprisonment
29 in a county jail not exceeding one year or in the state prison, by a
30 fine not exceeding one thousand dollars (\$1,000), or by both that
31 imprisonment and fine. The juvenile court, on forms prescribed
32 by the Department of Justice, shall notify the department of persons
33 subject to this subdivision. Notwithstanding any other law, the
34 forms required to be submitted to the department pursuant to this
35 subdivision may be used to determine eligibility to acquire a
36 firearm.

37 (f) Subdivision (a) shall not apply to a person who has been
38 convicted of a felony under the laws of the United States unless
39 either of the following criteria is satisfied:

1 (1) Conviction of a like offense under California law can only
2 result in imposition of felony punishment.

3 (2) The defendant was sentenced to a federal correctional facility
4 for more than 30 days, or received a fine of more than one thousand
5 dollars (\$1,000), or received both punishments.

6 (g) (1) Every person who purchases or receives, or attempts to
7 purchase or receive, a firearm knowing that he or she is prohibited
8 from doing so by a temporary restraining order or injunction issued
9 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure,
10 a protective order as defined in Section 6218 of the Family Code,
11 a protective order issued pursuant to Section 136.2 or 646.91 of
12 this code, or a protective order issued pursuant to Section 15657.03
13 of the Welfare and Institutions Code, is guilty of a public offense,
14 which shall be punishable by imprisonment in a county jail not
15 exceeding one year or in the state prison, by a fine not exceeding
16 one thousand dollars (\$1,000), or by both that imprisonment and
17 fine.

18 (2) Every person who owns or possesses a firearm knowing that
19 he or she is prohibited from doing so by a temporary restraining
20 order or injunction issued pursuant to Section 527.6 or 527.8 of
21 the Code of Civil Procedure, a protective order as defined in
22 Section 6218 of the Family Code, a protective order issued pursuant
23 to Section 136.2 or 646.91 of this code, or a protective order issued
24 pursuant to Section 15657.03 of the Welfare and Institutions Code,
25 is guilty of a public offense, which shall be punishable by
26 imprisonment in a county jail not exceeding one year, by a fine
27 not exceeding one thousand dollars (\$1,000), or by both that
28 imprisonment and fine.

29 (3) The Judicial Council shall provide notice on all protective
30 orders that the respondent is prohibited from owning, possessing,
31 purchasing, receiving, or attempting to purchase or receive a
32 firearm while the protective order is in effect. The order shall also
33 state that the firearm shall be relinquished to the local law
34 enforcement agency for that jurisdiction or sold to a licensed gun
35 dealer, and that proof of surrender or sale shall be filed within a
36 specified time of receipt of the order. The order shall state the
37 penalties for a violation of the prohibition. The order shall also
38 state on its face the expiration date for relinquishment.

1 (4) If probation is granted upon conviction of a violation of this
2 subdivision, the court shall impose probation consistent with
3 Section 1203.097.

4 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
5 justifiable where all of the following conditions are met:

6 (A) The person found the firearm or took the firearm from a
7 person who was committing a crime against him or her.

8 (B) The person possessed the firearm no longer than was
9 necessary to deliver or transport the firearm to a law enforcement
10 agency for that agency's disposition according to law.

11 (C) If the firearm was transported to a law enforcement agency,
12 it was transported in accordance with paragraph (18) of subdivision
13 (a) of Section 12026.2.

14 (D) If the firearm is being transported to a law enforcement
15 agency, the person transporting the firearm has given prior notice
16 to the law enforcement agency that he or she is transporting the
17 firearm to the law enforcement agency for disposition according
18 to law.

19 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
20 (e), the trier of fact shall determine whether the defendant was
21 acting within the provisions of the exemption created by this
22 subdivision.

23 (3) The defendant has the burden of proving by a preponderance
24 of the evidence that he or she comes within the provisions of the
25 exemption created by this subdivision.

26 (i) Subject to available funding, the Attorney General, working
27 with the Judicial Council, the California Alliance Against Domestic
28 Violence, prosecutors, and law enforcement, probation, and parole
29 officers, shall develop a protocol for the implementation of the
30 provisions of this section. The protocol shall be designed to
31 facilitate the enforcement of restrictions on firearm ownership,
32 including provisions for giving notice to defendants who are
33 restricted, provisions for informing those defendants of the
34 procedures by which defendants shall dispose of firearms when
35 required to do so, provisions explaining how defendants shall
36 provide proof of the lawful disposition of firearms, and provisions
37 explaining how defendants may obtain possession of seized
38 firearms when legally permitted to do so pursuant to this section
39 or any other provision of law. The protocol shall be completed on
40 or before January 1, 2005.

1 *SEC. 3.5. Section 12021 of the Penal Code is amended to read:*

2 12021. (a) (1) Any person who has been convicted of a felony
3 under the laws of the United States, the State of California, or any
4 other state, government, or country or of an offense enumerated
5 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
6 to the use of any narcotic drug, and who owns, purchases, receives,
7 or has in his or her possession or under his or her custody or control
8 any firearm is guilty of a felony.

9 (2) Any person who has two or more convictions for violating
10 paragraph (2) of subdivision (a) of Section 417 and who owns,
11 purchases, receives, or has in his or her possession or under his or
12 her custody or control any firearm is guilty of a felony.

13 (b) Notwithstanding subdivision (a), any person who has been
14 convicted of a felony or of an offense enumerated in Section
15 12001.6, when that conviction results from certification by the
16 juvenile court for prosecution as an adult in an adult court under
17 Section 707 of the Welfare and Institutions Code, and who owns
18 or has in his or her possession or under his or her custody or control
19 any firearm is guilty of a felony.

20 (c) (1) Except as provided in subdivision (a) or paragraph (2)
21 of this subdivision, any person who has been convicted of a
22 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
23 subdivision (d) of Section 148, Section 171b, *paragraph (1) of*
24 *subdivision (a) of Section 171c*, 171d, 186.28, 240, 241, 242, 243,
25 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6,
26 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of
27 Section 12034, Section 12040, subdivision (b) of Section 12072,
28 subdivision (a) of former Section 12100, Section 12220, 12320,
29 or 12590, or Section 8100, 8101, or 8103 of the Welfare and
30 Institutions Code, any firearm-related offense pursuant to Sections
31 871.5 and 1001.5 of the Welfare and Institutions Code, or of the
32 conduct punished in paragraph (3) of subdivision (g) of Section
33 12072, and who, within 10 years of the conviction, owns,
34 purchases, receives, or has in his or her possession or under his or
35 her custody or control, any firearm is guilty of a public offense,
36 which shall be punishable by imprisonment in a county jail not
37 exceeding one year or in the state prison, by a fine not exceeding
38 one thousand dollars (\$1,000), or by both that imprisonment and
39 fine. The court, on forms prescribed by the Department of Justice,
40 shall notify the department of persons subject to this subdivision.

1 However, the prohibition in this paragraph may be reduced,
2 eliminated, or conditioned as provided in paragraph (2) or (3).

3 (2) Any person employed as a peace officer described in Section
4 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
5 or livelihood is dependent on the ability to legally possess a
6 firearm, who is subject to the prohibition imposed by this
7 subdivision because of a conviction under Section 273.5, 273.6,
8 or 646.9, may petition the court only once for relief from this
9 prohibition. The petition shall be filed with the court in which the
10 petitioner was sentenced. If possible, the matter shall be heard
11 before the same judge who sentenced the petitioner. Upon filing
12 the petition, the clerk of the court shall set the hearing date and
13 shall notify the petitioner and the prosecuting attorney of the date
14 of the hearing. Upon making each of the following findings, the
15 court may reduce or eliminate the prohibition, impose conditions
16 on reduction or elimination of the prohibition, or otherwise grant
17 relief from the prohibition as the court deems appropriate:

18 (A) Finds by a preponderance of the evidence that the petitioner
19 is likely to use a firearm in a safe and lawful manner.

20 (B) Finds that the petitioner is not within a prohibited class as
21 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
22 and the court is not presented with any credible evidence that the
23 petitioner is a person described in Section 8100 or 8103 of the
24 Welfare and Institutions Code.

25 (C) (i) Finds that the petitioner does not have a previous
26 conviction under this subdivision no matter when the prior
27 conviction occurred.

28 (ii) In making its decision, the court shall consider the
29 petitioner's continued employment, the interest of justice, any
30 relevant evidence, and the totality of the circumstances. The court
31 shall require, as a condition of granting relief from the prohibition
32 under this section, that the petitioner agree to participate in
33 counseling as deemed appropriate by the court. Relief from the
34 prohibition shall not relieve any other person or entity from any
35 liability that might otherwise be imposed. It is the intent of the
36 Legislature that courts exercise broad discretion in fashioning
37 appropriate relief under this paragraph in cases in which relief is
38 warranted. However, nothing in this paragraph shall be construed
39 to require courts to grant relief to any particular petitioner. It is
40 the intent of the Legislature to permit persons who were convicted

1 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
2 relief from the prohibition imposed by this subdivision.

3 (3) Any person who is subject to the prohibition imposed by
4 this subdivision because of a conviction of an offense prior to that
5 offense being added to paragraph (1) may petition the court only
6 once for relief from this prohibition. The petition shall be filed
7 with the court in which the petitioner was sentenced. If possible,
8 the matter shall be heard before the same judge that sentenced the
9 petitioner. Upon filing the petition, the clerk of the court shall set
10 the hearing date and notify the petitioner and the prosecuting
11 attorney of the date of the hearing. Upon making each of the
12 following findings, the court may reduce or eliminate the
13 prohibition, impose conditions on reduction or elimination of the
14 prohibition, or otherwise grant relief from the prohibition as the
15 court deems appropriate:

16 (A) Finds by a preponderance of the evidence that the petitioner
17 is likely to use a firearm in a safe and lawful manner.

18 (B) Finds that the petitioner is not within a prohibited class as
19 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
20 and the court is not presented with any credible evidence that the
21 petitioner is a person described in Section 8100 or 8103 of the
22 Welfare and Institutions Code.

23 (C) (i) Finds that the petitioner does not have a previous
24 conviction under this subdivision, no matter when the prior
25 conviction occurred.

26 (ii) In making its decision, the court may consider the interest
27 of justice, any relevant evidence, and the totality of the
28 circumstances. It is the intent of the Legislature that courts exercise
29 broad discretion in fashioning appropriate relief under this
30 paragraph in cases in which relief is warranted. However, nothing
31 in this paragraph shall be construed to require courts to grant relief
32 to any particular petitioner.

33 (4) Law enforcement officials who enforce the prohibition
34 specified in this subdivision against a person who has been granted
35 relief pursuant to paragraph (2) or (3) shall be immune from any
36 liability for false arrest arising from the enforcement of this
37 subdivision unless the person has in his or her possession a certified
38 copy of the court order that granted the person relief from the
39 prohibition. This immunity from liability shall not relieve any

1 person or entity from any other liability that might otherwise be
2 imposed.

3 (d) (1) Any person who, as an express condition of probation,
4 is prohibited or restricted from owning, possessing, controlling,
5 receiving, or purchasing a firearm and who owns, purchases,
6 receives, or has in his or her possession or under his or her custody
7 or control, any firearm but who is not subject to subdivision (a) or
8 (c) is guilty of a public offense, which shall be punishable by
9 imprisonment in a county jail not exceeding one year or in the
10 state prison, by a fine not exceeding one thousand dollars (\$1,000),
11 or by both that imprisonment and fine. The court, on forms
12 provided by the Department of Justice, shall notify the department
13 of persons subject to this subdivision. The notice shall include a
14 copy of the order of probation and a copy of any minute order or
15 abstract reflecting the order and conditions of probation.

16 (2) For any person who is subject to subdivision (a), (b), or (c),
17 the court shall, at the time judgment is imposed, provide on a form
18 supplied by the Department of Justice, a notice to the defendant
19 prohibited by this section from owning, purchasing, receiving,
20 possessing or having under his or her custody or control, any
21 firearm. The notice shall inform the defendant of the prohibition
22 regarding firearms and include a form to facilitate the transfer of
23 firearms. Failure to provide the notice shall not be a defense to a
24 violation of this section.

25 (e) Any person who (1) is alleged to have committed an offense
26 listed in subdivision (b) of Section 707 of the Welfare and
27 Institutions Code, an offense described in subdivision (b) of Section
28 1203.073, any offense enumerated in paragraph (1) of subdivision
29 (c), or any offense described in subdivision (a) of Section 12025,
30 subdivision (a) of Section 12031, or subdivision (a) of Section
31 12034, and (2) is subsequently adjudged a ward of the juvenile
32 court within the meaning of Section 602 of the Welfare and
33 Institutions Code because the person committed an offense listed
34 in subdivision (b) of Section 707 of the Welfare and Institutions
35 Code, an offense described in subdivision (b) of Section 1203.073,
36 any offense enumerated in paragraph (1) of subdivision (c), or any
37 offense described in subdivision (a) of Section 12025, subdivision
38 (a) of Section 12031, or subdivision (a) of Section 12034, shall
39 not own, or have in his or her possession or under his or her
40 custody or control, any firearm until the age of 30 years. A

1 violation of this subdivision shall be punishable by imprisonment
2 in a county jail not exceeding one year or in the state prison, by a
3 fine not exceeding one thousand dollars (\$1,000), or by both that
4 imprisonment and fine. The juvenile court, on forms prescribed
5 by the Department of Justice, shall notify the department of persons
6 subject to this subdivision. Notwithstanding any other law, the
7 forms required to be submitted to the department pursuant to this
8 subdivision may be used to determine eligibility to acquire a
9 firearm.

10 (f) Subdivision (a) shall not apply to a person who has been
11 convicted of a felony under the laws of the United States unless
12 either of the following criteria is satisfied:

13 (1) Conviction of a like offense under California law can only
14 result in imposition of felony punishment.

15 (2) The defendant was sentenced to a federal correctional facility
16 for more than 30 days, or received a fine of more than one thousand
17 dollars (\$1,000), or received both punishments.

18 (g) (1) Every person who purchases or receives, or attempts to
19 purchase or receive, a firearm knowing that he or she is prohibited
20 from doing so by a temporary restraining order or injunction issued
21 pursuant to Section 527.6-~~or~~, 527.8, *or* 527.85 of the Code of Civil
22 Procedure, a protective order as defined in Section 6218 of the
23 Family Code, a protective order issued pursuant to Section 136.2
24 or 646.91 of this code, or a protective order issued pursuant to
25 Section 15657.03 of the Welfare and Institutions Code, is guilty
26 of a public offense, which shall be punishable by imprisonment
27 in a county jail not exceeding one year or in the state prison, by a
28 fine not exceeding one thousand dollars (\$1,000), or by both that
29 imprisonment and fine.

30 (2) Every person who owns or possesses a firearm knowing that
31 he or she is prohibited from doing so by a temporary restraining
32 order or injunction issued pursuant to Section 527.6-~~or~~, 527.8, *or*
33 527.85 of the Code of Civil Procedure, a protective order as defined
34 in Section 6218 of the Family Code, a protective order issued
35 pursuant to Section 136.2 or 646.91 of this code, or a protective
36 order issued pursuant to Section 15657.03 of the Welfare and
37 Institutions Code, is guilty of a public offense, which shall be
38 punishable by imprisonment in a county jail not exceeding one
39 year, by a fine not exceeding one thousand dollars (\$1,000), or by
40 both that imprisonment and fine.

(3) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with Section 1203.097.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to

1 facilitate the enforcement of restrictions on firearm ownership,
2 including provisions for giving notice to defendants who are
3 restricted, provisions for informing those defendants of the
4 procedures by which defendants shall dispose of firearms when
5 required to do so, provisions explaining how defendants shall
6 provide proof of the lawful disposition of firearms, and provisions
7 explaining how defendants may obtain possession of seized
8 firearms when legally permitted to do so pursuant to this section
9 or any other provision of law. The protocol shall be completed on
10 or before January 1, 2005.

11 *SEC. 4. Section 3.5 of this bill incorporates amendments to*
12 *Section 12021 of the Penal Code proposed by both this bill and*
13 *Senate Bill 1062 of the 2009–10 Regular Session. It shall only*
14 *become operative if (1) both bills are enacted and become effective*
15 *on or before January 1, 2011, (2) each bill amends Section 12021*
16 *of the Penal Code, and (3) this bill is enacted after Senate Bill*
17 *1062, in which case Section 3 of this bill shall not become*
18 *operative.*

19 ~~SEC. 4.~~

20 *SEC. 5.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.